

RECEIVED  
U.S. ATTORNEY'S

JUN 16 3 59 PM '03

LAS VEGAS, NV

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                                                      |                                               |
|------------------------------------------------------|-----------------------------------------------|
| <input checked="" type="checkbox"/> FILED<br>ENTERED | <input checked="" type="checkbox"/> RE<br>SER |
| COUNSEL/PARTIES                                      |                                               |
| JUN 16 2003                                          |                                               |
| CLERK US DISTRICT COURT<br>DISTRICT OF NEVADA        |                                               |
| BY:                                                  | 664                                           |

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEL WEBB COMMUNITIES, INC.,  
an Arizona Corporation,

Defendant.

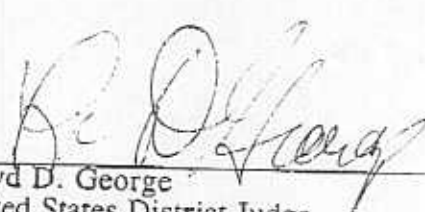
CV-S-03-0096-LDG (LRL)

ORDER


The United States having complied with 28 C.F.R. § 50.7 and for good cause shown, the court hereby ORDERS that the motion to enter consent decree (#6) is GRANTED.

The court further ORDERS that the consent decree (#3) is REINSTATED.

DATED this 14 day of June, 2003.

  
Lloyd D. George  
United States District Judge

Fax Clients, Bischoff; cc RF

 BTW  
2000V00405

702 JAN 27 PM 3:17

JAN 31 10 22 AM '03

JAN 31 3 34 PM '03

1 THOMAS L. SANSONETTI  
 2 Assistant Attorney General  
 3 Environment and Natural  
 4 Resources Division  
 5 U.S. Department of Justice  
 6 950 Pennsylvania Ave., NW  
 7 Washington, DC 20530

8 DANIEL G. BOGDEN  
 9 United States Attorney  
 10 District of Nevada  
 11 BLAINE T. WELSH  
 12 Assistant United States Attorney  
 13 Bar No. 4790  
 14 333 Las Vegas Blvd. So., #5000  
 15 Las Vegas, Nevada 89101  
 16 Ph: (702) 388-6336  
 17 Fax: (702) 388-6787  
 18 Attorneys for Plaintiff  
 19 United States of America.



20 UNITED STATES DISTRICT COURT  
 21 DISTRICT OF NEVADA

22 UNITED STATES OF AMERICA, )  
 23 )  
 24 Plaintiff, )  
 25 )  
 26 vs. )  
 27 )  
 28 DEL WEBB COMMUNITIES, INC., )  
 29 an Arizona Corporation, )  
 30 )  
 31 Defendant. )

CV-S-03-0096-LDG-LRL

CONSENT DECREE

32 WHEREAS Plaintiff, the United States of America, on behalf  
 33 of the United States Environmental Protection Agency ("EPA"), has  
 34 filed a Complaint initiating this action against Del Webb  
 35 Communities, Inc. ("Del Webb" or "Defendant") in the United  
 36 . . .

Fax Clients

3

1 States District Court for the District of Nevada requesting civil  
2 penalties and injunctive relief;

3 WHEREAS Plaintiff, the United States of America, alleges  
4 that Del Webb violated the Clean Air Act ("the Act"), 42 U.S.C.  
5 §§ 7401, et seq., and the federally enforceable Nevada State  
6 Implementation Plan ("SIP"), including § 41 of the Clark County  
7 Department of Air Quality Management Regulations, by failing to  
8 take reasonable precautions to abate fugitive dust emissions on  
9 eleven (11) separate occasions;

10 WHEREAS EPA issued an Amended Finding and Notice of  
11 Violation ("NOV") with respect to these allegations on  
12 September 10, 2001;

13 WHEREAS Del Webb disputes the violations alleged in the NOV  
14 and the Complaint;

15 WHEREAS this Consent Decree does not constitute an admission  
16 of liability by Del Webb; and

17 WHEREAS the parties have agreed that settlement of the civil  
18 judicial claims as alleged in the Complaint is in the public  
19 interest and that entry of this Consent Decree without further  
20 litigation is the most appropriate way to resolve this action,

21 THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED as follows:

22 **I. JURISDICTION AND PARTIES BOUND**

23 1. This Court has jurisdiction over the subject matter of  
24 this action and over the parties pursuant to § 113(b) of the Act,  
25 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue  
26 is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c)

1 and 1395(a), and § 113(b) of the Act, 42 U.S.C. § 7413(b),  
2 because the violations that are the subject of the Complaint in  
3 this action took place in Clark County, Nevada and because the  
4 Defendant is doing business in this District. The Complaint  
5 states a claim upon which relief may be granted against Del Webb  
6 pursuant to 42 U.S.C. § 7413(b). A notice of the commencement of  
7 this action has been given to the State of Nevada through the  
8 Clark County Department of Air Quality Management in accordance  
9 with § 113(b) of the Act, 42 U.S.C. § 7413(b). Defendant shall  
10 not challenge entry of this Consent Decree or this Court's  
11 jurisdiction to enter, enforce, modify or terminate this Consent  
12 Decree.

13 2. This Consent Decree shall apply to and be binding upon  
14 Defendant, its successors and assigns. It shall also apply to  
15 and be binding upon the United States on behalf of the EPA. For  
16 purposes of this paragraph 2, the term "successors and assigns"  
17 shall not include any person or entity who, in the ordinary  
18 course of business, purchases a parcel from Defendant, provided  
19 that there are no common directors or officers between Defendant  
20 and the purchaser.

21 3. If Defendant merges with or is acquired by a third  
22 party, Defendant shall attach a copy of this Consent Decree to  
23 any merger or acquisition agreement and shall make performance of  
24 the obligations of Defendant under this Consent Decree an  
25 obligation of the new entity, in the case of a merger, or the  
26 purchaser, in the case of an acquisition. Any such merger or

1 acquisition will not relieve Defendant from the obligations of  
2 this Consent Decree. Nothing herein shall preclude Defendant  
3 from allowing its successors in interest to perform Defendant's  
4 obligations under this Consent Decree. However, Defendant is  
5 ultimately responsible for full compliance with the terms of this  
6 Consent Decree.

7 **II. CIVIL PENALTY**

8 4. After entry of this Consent Decree and within ten (10)  
9 days of the receipt of the electronic funds transfer procedures  
10 described in paragraph 5, Del Webb shall pay a civil penalty of  
11 Fifty Thousand Dollars (\$50,000.00) to the United States.

12 5. Payments under this Consent Decree shall be made by  
13 electronic funds transfer to the United States Treasury according  
14 to current United States electronic funds transfer ("EFT")  
15 procedures. The United States shall provide a copy of current  
16 EFT procedures to Defendant pursuant to § IX (Notification) of  
17 this Consent Decree. Concurrently with the EFT, Defendant shall  
18 fax notice of payment to the person designated as "point of  
19 contact" on the EFT instructions and shall send notice of payment  
20 to EPA and the United States Attorney's Office at the addresses  
21 listed in § IX (Notification). The notice of payment shall  
22 identify:

- 23 (a) the date and amount of money transferred;  
24 (b) the name and address of the transferring bank;  
25 (c) this case by name;  
26 (d) the civil action number;

- (e) the United States Attorney's Office file number  
(2000V00405) and DOJ File No. 90-5-2-1-07313;  
(f) this Consent Decree (including date of entry); and  
(g) a description of the reason for the payment,  
including the paragraph number of this Consent  
Decree that is most relevant to the payment.

### III. INJUNCTIVE RELIEF

#### 6. Definitions.

(a) "Effective Date." The "effective date" of this  
Consent Decree is the date of entry of the Consent Decree by the  
Clerk of the United States District Court for the District of  
Nevada.

(b) "Best Management Practices." For purposes of this  
Consent Decree, "best management practices" is defined as those  
practices specified in the Clark County Department of Air Quality  
Management's Construction Activities Notebook, Version 1.0, dated  
January 2001, including any amendments to those "best management  
practices."

(c) "Fugitive Dust Emissions." For purposes of this  
Consent Decree, "fugitive dust emissions" is defined to mean  
particulate matter that is not collected by a capture system,  
that is entrained into the ambient air, and that is caused by  
human and/or natural activities, such as, but not limited to,  
movement of the soil, vehicles, equipment, blasting and wind.



1 (d) "Emission" or "Emit." For purposes of this Consent  
2 Decree, "emission" or "emit" means to release or pass into the  
3 atmosphere any fugitive dust.

4 (e) "Dust Palliative." For purposes of this Consent  
5 Decree, "dust palliative" means hygroscopic material, non-toxic  
6 chemical stabilizer or other dust palliative material that is not  
7 prohibited for ground surface application by the federal EPA or  
8 the Nevada Department of Environmental Protection or any  
9 applicable law or regulation as a treatment material for reducing  
10 fugitive dust emissions.

11 (f) "Dust Suppressant." For purposes of this Consent  
12 Decree, "dust suppressant" means water, hygroscopic material,  
13 solution of water and chemical surfactants, foam, non-toxic  
14 chemical stabilizer or any other dust palliative that is not  
15 prohibited for ground surface application by the EPA or the  
16 Nevada Department of Environmental Protection or any applicable  
17 law or regulation as a treatment material for reducing fugitive  
18 dust emissions.

19 (g) "Land Development Construction Activity." For  
20 purposes of this Consent Decree, "land development construction  
21 activity" is defined to include the following activities:  
22 backfilling; blasting; clearing and grubbing; crushing; cutting  
23 and filling; constructing, maintaining and using areas of  
24 disturbed soil; moving soil, rock and other bulk materials;  
25 landscaping; paving and subgrade preparation; screening;  
26 constructing, maintaining and using staging areas, stockpiles,

1 streets, haul roads and parking areas; trenching; and truck  
2 loading.

3 **IV. FUGITIVE DUST EMISSION ABATEMENT CONTROL**

4 7. In order to abate fugitive dust emissions, Del Webb  
5 agrees to the following:

6 (a) Del Webb's land development department managers,  
7 field superintendents, project managers, and dust control  
8 monitors (and any employees occupying similar positions in the  
9 event employee titles are changed) whose job responsibilities  
10 require them to spend all or a portion of their time at Del  
11 Webb's land development sites (collectively referred to herein as  
12 "Land Development Managers") in Clark County, Nevada must  
13 complete the Clark County Department of Air Quality Management  
14 dust control course within six (6) months of the Effective Date  
15 of this Consent Decree. Any new Land Development Managers hired  
16 by Del Webb after the Effective Date of this Consent Decree must  
17 complete the course within two (2) months of the date of hire.

18 (b) Del Webb shall comply with the best management  
19 practices to avoid or abate fugitive dust emissions from any site  
20 in Clark County, Nevada at which Del Webb conducts land  
21 development construction activity. Without limitation, those  
22 best management practices include the obligation to supply  
23 sufficient fugitive dust abatement equipment or treatments to  
24 abate fugitive dust emissions. Best management practices  
25 include, by way of illustration, stabilizing unpaved roads and  
26 parking lots to prevent visible fugitive dust emissions that



1 exceed twenty percent (20%) opacity; preventing any dust plume  
2 from extending more than 100 yards, horizontally or vertically,  
3 from the point of origin; crusting over open areas and vacant  
4 lots by water or other appropriate methods, as demonstrated by  
5 the drop ball/steel ball test; or applying clean gravel as a dust  
6 suppressant or palliative to disturbed areas.

7 (c) Del Webb shall ensure that a land development field  
8 superintendent (or a person with similar responsibilities)  
9 visits, at least once each day, each site in Clark County, Nevada  
10 where land development construction activities occur for which a  
11 fugitive dust control permit has been obtained, if land  
12 development construction activity is ongoing, to ensure that  
13 fugitive dust abatement practices are followed.

14 (d) Del Webb shall have, during regular business hours,  
15 a land development field superintendent (or a person with similar  
16 responsibilities) present at each area in Clark County, Nevada  
17 where land development construction activities occur for which a  
18 dust control permit has been issued, if land development  
19 construction activity is ongoing in that area, with authority to  
20 suspend operations at any time fugitive dust emissions occur or  
21 when appropriate fugitive dust abatement equipment or dust  
22 palliatives or dust suppressants are either not available or not  
23 in place. At all other times Del Webb shall have a land  
24 development field superintendent (or a person with similar  
25 responsibilities) on call for all areas where land construction  
26 . . .

activities are ongoing with authority and resources to take such action as is necessary to abate fugitive dust emissions.

(e) Del Webb shall provide to EPA certification that its Land Development Managers have been trained as required under § IV, paragraph 7(a) of this Consent Decree. These certifications shall list the names of the Land Development Managers trained, and for each listed Land Development Manager, the date each Land Development Manager was hired, the date each Land Development Manager received fugitive dust emission control training, and the name of the individual or entity who provided the training. The first certification shall list those Land Development Managers who received their training before the Effective Date of this Consent Decree. These certifications shall be due to the EPA every six (6) months for a period of two (2) years. The first certification will be due six (6) months from the Effective Date of this Consent Decree. The last certification will be due two (2) years after the Effective Date of this Consent Decree.

#### V. STIPULATED PENALTIES

8. Except as may be excused under § VII (Force Majeure) of this Consent Decree, and for a period of twenty-four (24) months from the Effective Date of this Consent Decree, Del Webb shall be liable for stipulated penalties for failure to comply with the requirements of § IV of this Consent Decree. Del Webb shall pay a stipulated penalty as follows:

| Penalty Per Day<br>Per Violation | Number of Days of<br>Violation |
|----------------------------------|--------------------------------|
| \$1,500.00                       | 1st - 15th                     |
| \$3,000.00                       | 16th - 30th                    |
| \$5,000.00                       | Each Day Beyond 30th           |

9. Defendant shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per day for failure to timely pay the civil penalty required by paragraph 4.

10. All stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Any stipulated penalty accruing pursuant to this Section shall be payable on demand and due not later than thirty (30) days from EPA's written demand. Stipulated penalties shall be paid by EFT in the same manner as set forth in paragraph 5. A transmittal letter shall accompany the payment of stipulated penalties to refer to this case by name, civil action number, this Consent Decree (including date of entry), USAO No. 2000V00405, and DOJ File No. 90-5-2-1-07313.

11. If Del Webb fails to pay stipulated penalties owed pursuant to this Consent Decree within thirty (30) days of EPA's written demand, it shall pay interest on the late payment for each day of late payment after the initial thirty (30) day time period. The rate of interest shall be the larger of twelve percent (12%) per year or the most recent interest rate

1 determined pursuant to 28 U.S.C. § 1961. If Defendant disputes  
2 its obligation to pay part or all of the stipulated penalty, it  
3 shall initiate the dispute resolution procedure under § VIII  
4 (Dispute Resolution) of this Consent Decree. If Defendant  
5 invokes dispute resolution, Defendant shall pay the United States  
6 any amount that it does not dispute.

7 12. Payment of stipulated penalties for violation of this  
8 Consent Decree is in addition to the United States' right to seek  
9 additional monetary penalties or other relief for the violations  
10 for which stipulated penalties were imposed. In addition, the  
11 United States reserves its right to pursue any or all relief for  
12 any or all violations outside the provisions of this Consent  
13 Decree.

#### 14 VI. RIGHT OF ENTRY

15 13. EPA and its contractors, consultants and agents shall  
16 have authority to enter any construction site where Del Webb is  
17 engaged in land development construction activity at all  
18 reasonable times upon proper presentation of correct credentials.  
19 This provision in no way limits or otherwise affects any right of  
20 entry held by the EPA pursuant to applicable federal, state or  
21 local laws, regulations and permits.

#### 22 VII. FORCE MAJEURE

23 14. Defendant's performance of the obligations in  
24 subparagraphs 7(a) through (d) of this Consent Decree may be  
25 excused or delayed to the extent, and for the period of time,  
26 . . .

1 that such performance is prevented or delayed by events that  
2 constitute a *force majeure*.

3 15. For purposes of this Consent Decree, a *force majeure* is  
4 defined as any event arising from causes beyond the control of  
5 Defendant, including its contractors, and that cannot be overcome  
6 by Defendant's diligent and timely efforts. For purposes of  
7 subparagraph 7(b) of this Consent Decree, a high wind event,  
8 which is defined as an hourly wind speed of greater than or equal  
9 to 30 mph or gusts equal to or greater than 40 mph at the  
10 location where land development construction activity is  
11 occurring, with no precipitation or only a trace of  
12 precipitation, shall be considered a *force majeure* event,  
13 provided that during such event Del Webb has suspended all land  
14 development construction activity which would otherwise cause  
15 fugitive dust to occur, and provided further that prior to such  
16 event Del Webb has applied best management practices and  
17 continues to apply best management practices during the event.  
18 Economic hardship, normal inclement weather, and increased costs  
19 of performance shall not be considered events beyond the  
20 reasonable control of Defendant for purposes of determining  
21 whether an event is a *force majeure*.

22 16. In the event of a *force majeure*, the time for  
23 performance of the activity delayed by the *force majeure* shall be  
24 extended for the time period of the delay attributable to the  
25 *force majeure*. The time for performance of any activity  
26 dependent on the delayed activity may be similarly extended,

1 except to the extent that the dependent activity can be  
2 implemented in a shorter time. EPA shall determine whether  
3 dependent activities will be delayed by the *force majeure* and  
4 whether the time period should be extended for performance of  
5 such activities. Defendant shall adopt all reasonable measures  
6 to avoid or minimize any delay caused by a *force majeure*.

7 17. When an event occurs or has occurred that may delay or  
8 prevent the performance of any obligation of this Consent Decree,  
9 Defendant shall notify by telephone (415-972-3988) the Chief, Air  
10 Enforcement Office, Air Division of the EPA, Region IX, within  
11 seventy-two (72) hours of such event. Telephone notification  
12 shall be followed by written notification, made within seven (7)  
13 days of such event. The written notification shall fully  
14 describe:

- 15 (a) the event that may delay or prevent performance;
- 16 (b) reasons for the delay, and the reasons the delay is  
17 beyond the reasonable control of the Defendant;
- 18 (c) the anticipated duration of the delay;
- 19 (d) actions taken or to be taken to prevent or minimize a  
20 delay;
- 21 (e) a schedule for implementation of any measures to be  
22 taken to mitigate the effect of the delay;
- 23 (f) any dependent activities and the time needed to  
24 implement any dependent activities; and
- 25 (g) whether Defendant claims the event to be a *force*  
26 *majeure*.



1 18. Defendant's failure to comply with the notice  
2 requirements provided under this Section for any delay in  
3 performance will be deemed an automatic forfeiture of its right  
4 to assert that the delay was caused by a *force majeure* unless  
5 such failure to provide notice was caused by a *force majeure*.

6 19. Within seven (7) days after receiving notice from  
7 Defendant pursuant to § IX, EPA shall provide written  
8 notification to Defendant stating whether Defendant's request for  
9 a delay is justified, and whether EPA agrees that such delay was  
10 caused by a *force majeure*. EPA's failure to respond to a request  
11 for delay shall be deemed a denial of that request. If Defendant  
12 disagrees with EPA's determination, it may initiate dispute  
13 resolution procedures pursuant to § VIII (Dispute Resolution) of  
14 this Consent Decree.

15 **VIII. DISPUTE RESOLUTION**

16 20. If Defendant disputes any determination made by EPA  
17 under this Consent Decree related to (1) a request by EPA for  
18 stipulated penalties, (2) EPA's determination related to *force*  
19 *majeure*, or (3) the termination of the Consent Decree under  
20 paragraph 34, it shall send a written notice to EPA and the  
21 Department of Justice ("DOJ") outlining the nature of the dispute  
22 and requesting informal negotiations to resolve the dispute.  
23 Such period of informal negotiations shall not extend beyond  
24 fifteen (15) working days from the date when the notice was sent  
25 unless the parties agree otherwise.

1        21. If the informal negotiations are unsuccessful, the  
2 determination of EPA shall control, unless Defendant files a  
3 motion with this Court for dispute resolution. Any such motion  
4 must be filed within thirty (30) days after receipt by Defendant  
5 of a notice in writing from EPA terminating informal negotiations  
6 and must be concurrently sent to DOJ and EPA. The United States  
7 shall then have thirty (30) days to respond to Defendant's  
8 motion. In any such dispute resolution proceeding, Defendant  
9 bears the burden of proving, by a preponderance of the evidence,  
10 that (a) in disputes regarding § VII (*Force Majeure*), the delay  
11 was caused by circumstances beyond the reasonable control of  
12 Defendant, its contractors, and agents, all reasonable measures  
13 were taken to avoid or minimize delay, and the duration of the  
14 delay was reasonable under the circumstances; and (b) in disputes  
15 regarding termination of the Consent Decree under paragraph 34,  
16 Defendant has satisfied all of its obligations under this Consent  
17 Decree. In disputes regarding EPA's request for stipulated  
18 penalties under § V, EPA shall bear the burden of proving, by  
19 preponderance of the evidence, that Defendant violated the terms  
20 and conditions of the Consent Decree.

21        22. A timely motion by Defendant will not toll the accrual  
22 of stipulated penalties under this Consent Decree, but payment  
23 shall be stayed pending resolution of the dispute.

24                    **IX. NOTIFICATION**

25        23. Except as otherwise specifically stated, all notices  
26 and submissions from Defendant to EPA required by this Consent

1 Decree shall be sent by certified mail, express mail, or similar  
2 overnight mail delivery service with return receipt requested, or  
3 delivered in person, not later than the day that such  
4 notification or submission is required by this Consent Decree,  
5 and addressed to:

6 Director, Air Division (AIR-1)  
7 U.S. Environmental Protection Agency, Region IX  
8 75 Hawthorne Street  
9 San Francisco, CA 94105  
10 Attn: Charles Alred, AIR-5

11 If the due date for a notice or report falls on a weekend day or  
12 federal or State of Nevada holiday, the notice or report shall be  
13 due on the next working day. All notices and reports submitted  
14 to EPA or DOJ shall refer to this Consent Decree and the date of  
15 entry of the Consent Decree, and shall cite the case name, the  
16 case number, USAO No. 2000V00405, and DOJ File No. 90-5-2-1-  
17 07313.

18 24. All submissions to EPA shall be signed and affirmed by  
19 a responsible official of the Defendant using the following  
20 certification statement:

21 I certify under penalty of law that I have  
22 examined and am familiar with the information  
23 submitted in this document and all  
24 attachments and that, based on inquiry of  
25 those individuals immediately responsible for  
26 obtaining the information, I certify that the  
information is true, accurate, and complete  
to the best of my knowledge, information, and  
belief. I am aware that there are  
significant penalties for submitting false  
information, including the possibility of  
fines and imprisonment.

1 25. Notice as required by this Consent Decree shall be  
2 submitted to:

3 U.S. Department of Justice:

4 Chief, Civil Division  
5 U.S. Attorney's Office  
6 333 Las Vegas Blvd. So., #5000  
7 Las Vegas, Nevada 89101  
8 Attn: USAO No. 2000V00405 (Welsh)

9 Del Webb Communities, Inc.:

10 Vice President, Land Development  
11 Del Webb Communities, Inc.  
12 11500 S. Eastern Avenue  
13 Henderson, Nevada 89012

14 Jorden, Bischoff, McGuire & Rose, P.L.C.  
15 7272 E. Indian School Road, Suite 205  
16 Scottsdale, Arizona 85251  
17 Attn: Charles A. Bischoff

18 **X. MISCELLANEOUS**

19 26. Entry of this Consent Decree and compliance with the  
20 requirements herein shall be in full settlement and satisfaction  
21 of the civil judicial claims of the United States against  
22 Defendant as alleged in the Complaint filed in this action and in  
23 the Amended NOV dated September 10, 2001. This Consent Decree  
24 resolves only those matters specifically alleged in the Complaint  
25 filed in this action and in the Amended NOV dated September 10,  
26 2001 through the date of lodging of this Consent Decree.

27 27. Except as specifically provided herein, the United  
28 States does not waive any rights or remedies available to it for  
29 violation by Defendant of federal or state laws or regulations.  
30 The United States reserves all legal and equitable remedies to  
31 enforce the provisions of this Consent Decree. This Consent

1 Decree shall in no way affect the United States' ability to bring  
2 future actions for any matters not specifically alleged in the  
3 Complaint filed in this action and in the Amended NOV dated  
4 September 10, 2001, through the date of lodging of this Consent  
5 Decree, and settled by this Consent Decree. Nothing in this  
6 Consent Decree is intended to nor shall be construed to operate  
7 in any way to resolve any criminal liability of Defendant.

8 28. This Consent Decree in no way affects Defendant's  
9 responsibilities to comply with all federal, state, or local laws  
10 and regulations.

11 29. If Del Webb fails to pay on a timely basis the full  
12 amount of any penalty or interest, it shall be liable for the  
13 United States' enforcement and collection expenses, including,  
14 but not limited to, attorney fees and costs incurred by the  
15 United States for collection proceedings.

16 30. The United States shall be deemed a judgment creditor  
17 for the purposes of collecting any penalties due under this  
18 Consent Decree.

19 31. Civil penalty payments made by Del Webb under this  
20 Consent Decree shall not be tax deductible.

21 32. Each party shall bear its own costs and attorney's fees  
22 in this action, except as otherwise provided herein.

23 33. This Consent Decree contains the entire agreement  
24 between the parties. This Consent Decree may not be enlarged,  
25 modified, or altered unless such modifications are made in  
26 writing and approved by all parties and the Court.

1        34. This Consent Decree shall terminate according to the  
2 procedure provided in this paragraph. After Defendant has  
3 complied with the requirements of paragraphs 4, 5 and 7, and § V  
4 (Stipulated Penalties) of this Consent Decree, Defendant shall  
5 provide EPA notice, stating that Defendant has satisfied all  
6 obligations of the Consent Decree and believes the Consent Decree  
7 can be terminated. Defendant's notice shall refer to this  
8 paragraph 34. Thereafter, EPA will provide Defendant with a  
9 written response, either stating EPA's agreement that the Consent  
10 Decree may be terminated, or stating EPA's determination that the  
11 Consent Decree should not be terminated. If EPA fails to provide  
12 written response within sixty (60) days after receiving written  
13 notice from Defendant or if EPA determines that the Consent  
14 Decree should not be terminated, Defendant may initiate dispute  
15 resolution procedures pursuant to § VIII (Dispute Resolution).  
16 If EPA determines that the Consent Decree may be terminated, the  
17 United States shall file a motion with the Court seeking  
18 termination.

19        35. The Court shall retain jurisdiction to resolve any  
20 disputes that arise under this Consent Decree.

21        36. Defendant agrees and acknowledges that final approval  
22 of this Consent Decree by the United States and entry of this  
23 Consent Decree is subject to the requirements of 28 C.F.R.  
24 § 50.7, which provides for notice of the lodging of this Consent  
25 Decree in the Federal Register, opportunity for public comment  
26 for at least thirty (30) days, and consideration by the United




1 States of any comments prior to entry of the Consent Decree by  
2 the Court. The United States reserves its right to withdraw  
3 consent to this Consent Decree based on comments received during  
4 the public notice period. Defendant consents to entry of this  
5 Consent Decree without further notice to the Court.

6 **XI. FINAL JUDGMENT**

7 37. Upon entry by this Court, this Consent Decree shall  
8 constitute a final judgment for purposes of Fed. R. Civ. P. 54  
9 and 58.

10  
11 **ORDER**

12 **IT IS SO ORDERED:**


13   
14 United States District Judge

15 DATED: 30 JAN 03

1 For the Plaintiff United States of America:


2 Thomas Sansonetti  
3 Assistant Attorney General  
4 Environment & Natural Resources Division

5 Dated: 12/6/02

  
6 W. BENJAMIN FISHEROW  
7 Deputy Section Chief  
8 Environmental Enforcement Section

9 DANIEL G. BOGDEN  
10 United States Attorney

11 Dated: 1/27/03

  
12 BLAINE T. WELSH  
13 Assistant United States Attorney  
14 District of Nevada

15 Dated: \_\_\_\_\_

16 WAYNE NASTRI  
17 Regional Administrator  
18 U.S. Environmental Protection  
19 Agency, Region IX  
20 San Francisco, CA

21 OF COUNSEL:

22 CAROL BUSSEY  
23 Assistant Regional Counsel  
24 U.S. Environmental Protection  
25 Agency, Region 9  
26 75 Hawthorne Street  
San Francisco, CA 94105

1  
2  
3 Dated: 1/13/03

Nancy J. Marvel for  
JOHN PETER SUAREZ  
Assistant Administrator for  
Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, D.C.

4  
5  
6  
7 Dated: 1-15-03

Wayne Nastri  
for WAYNE NASTRI  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region IX  
San Francisco, CA

8  
9  
10 OF COUNSEL:

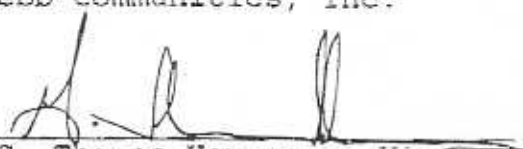
CAROL BUSSEY  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

1 For Defendant Del Webb Communities, Inc.:

2 Del Webb Communities, Inc.


3  
4 Dated: 11/6/02

By

  
G. Thomas Hennessy, Vice President  
Del Webb Communities, Inc.  
11500 S. Eastern Avenue  
Henderson, Nevada 89012

7 Dated: 11/5/02

By

  
Charles A. Bischoff, Esq.  
Jorden, Bischoff, McGuire  
& Rose, P.L.C.  
7272 E. Indian School Road  
Suite 205  
Scottsdale, Arizona 85251  
Attorney for Defendant  
Del Webb Communities, Inc.